

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

HARRY SMITH

* CLERK'S OFFICE
AT BALTIMORE

v.

* CIVIL ACTION NO. E-11-2691

DEPARTMENT OF CORRECTIONS

*

MEMORANDUM

Seeking unspecified damages, Plaintiff, presently incarcerated in the Maryland Transition Center Hospital, filed suit against "Department of Corrections." Plaintiff states that on August 7, 2011, after showering, he sat on a plastic chair while drying off. The chair leg broke and he fell directly onto his "external fixation device" and then to the floor. He states he was immediately taken to the hospital where the surgeon had to reset his leg and external fixation. He asks that "the Court ...help [him] sue for neglect, pain and suffering." ECF No. 1. Because he appears to be indigent, Plaintiff's Motion for Leave to Proceed in Forma Pauperis (ECF No. 2) shall be granted, pursuant to 28 U.S.C. § 1915(a).

To sustain an action under 42 U.S.C. § 1983, plaintiff must prove two elements: (1) that he suffered a deprivation of "rights, privileges or immunities secured by the Constitution and laws" of the United States; and (2) that the act or omission causing the deprivation was committed by a person acting under color of law. See West v. Atkins, 487 U.S. 42, 48 (1988).

Even if this Court were to assume that the Department of Corrections and its staff were responsible for negligently maintaining the shower chair, Plaintiff's lawsuit constitutes, at most, a tort action in negligence. Such a claim does not amount to a constitutional or federal statutory violation, and thus cannot be brought in this Court pursuant to the Civil Rights Act. See Daniels

v. Williams, 474 U.S. 327 (1986). Accordingly, Plaintiff's action must be dismissed for failure to state a claim on which relief may be granted, without requiring service of process upon or a response from the named Defendant.

Plaintiff is hereby notified that, pursuant to federal law, he may be barred from filing future suits in forma pauperis if he continues to file federal actions that are subject to dismissal as frivolous or malicious or for failure to state a claim on which relief may be granted under 28 U.S.C. §1915(e) or under F.R.Civ.P. 12(b)(6).

A separate Order shall be entered in accordance with the foregoing.

10/3/11
(Date)

/s/
Benson Everett Legg
United States District Judge